

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2016-390-C**

In re:)	
)	
PETITION OF UNITED TELEPHONE COMPANY)	
OF THE CAROLINAS LLC D/B/A CENTURYLINK,)	
FRONTIER COMMUNICATIONS OF THE)	
CAROLINAS, INC., LEAD PETITIONERS)	
)	
AND DEX MEDIA, INC.,)	RESPONSE STATEMENT
)	OF DEX MEDIA, INC.
For Full or Partial Waiver from Directory)	
Requirements of SCCR § 103-631)	

BACKGROUND AND INTRODUCTION

On April 26, 2017, Dex Media, Inc. (“Dex Media”) filed its direct comments pursuant to the Commission’s invitation in this docket. On the same date comments were also filed by Charter Fiberlink SC CCO, LLC (“Charter”) and the South Carolina Telephone Coalition (“SCTC”). Dex Media files this Response to Charter and SCTC.

DISCUSSION

In considering the comments of Charter and SCTC it may be helpful to review the relevant Federal statutory scheme. First, in 1996, when Congress opened all telecommunications markets in the U.S. to competition it preserved a great deal of the state’s regulatory authority over intrastate telecommunications services. *See generally*, Public Law 104-104; 110 Stat. 143 (“1996 Act”). While Section 253 of the 1996 Act preempted any state or local laws that had the effect of prohibiting competitive entry, it conditionally reserved to the states the ability “to impose ... requirements necessary to preserve and advance universal service, protect the public

safety and welfare, [and] ensure the continued quality of telecommunications services....” 47 U.S.C. § 253(b). However, any such requirements may be imposed only “on a competitively neutral basis.” *Id.*

Second, the 1996 Act sought to promote competition in the publishing of directories, by requiring phone companies to provide “subscriber list information” to any directory publisher, “on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions.” 47 U.S.C. § 222(e); *see also, In the Matter of Provision of Directory Listing Information*, 14 F.C.C. Rcd. 15550, Note 15 (1999).

A. Charter’s Requests are Beyond the Scope of This Docket and Contrary to Law.

At the outset, this docket was commenced when the petitioners filed for a conditional waiver of S.C. Code Reg. § 103-631 (“Directory Rule”), which requires telecommunications utilities to “publish” and “distribute” to all customers a directory at “regular” intervals. In the *Order Granting Waiver to Publish a Telephone Directory* issued in this docket on February 16, 2017 (“Order”), the Commission granted the waiver of the Directory Rule. However, compliance with S.C. Code §§ 58-9-10(9) and 58-9-576(C)(1), which require provision of “listings,” was to continue unaffected in any way by either the petition or the Order. *See Order*, Note 1. The Order also set comments and a workshop, “to discuss the means by which the segment of the population that does not have a computer, or ready access to a computer, or who want a paper directory, can best be served going forward as directories become more digitized.” *Order* at 6-7.

Charter’s comments do not address the issues in the Order or workshop notice at all and are outside the scope of this docket. Instead they improperly seek to expand the issues to cover:

1. “Listings” (expressly excluded from the Order);
2. “Marketing” by a company (Dex Media) that is not a utility within the scope of the Commission’s jurisdiction; and
3. “Access” (an attempted cramdown of an unwanted publishing contract that is not required by law and outside the Commission’s jurisdiction).

The Commission should decline to consider these additional issues in this docket.

While Dex believes these issues are outside the scope of the workshop and this docket and, therefore, should not be considered in this proceeding, we will address each of them briefly to demonstrate why not. First, Charter proposes that the Petitioners be required to allow “customers of competitive providers nondiscriminatory access to electronic listings, including those published online” and “Such access must be free of charge...and include the same ability as ILEC customers to request and receive a printed directory free of charge.” To the extent Charter considers itself to be a “telecommunications carrier” it is *Charter* that has an obligation to provide listings to Dex Media at regulated rates. *E.g.*, 47 CFR Sec. 64.2301, *et seq.* However, Charter and other CLECs have consistently sought to avoid any application of telecommunications regulations to themselves. In particular, they have historically relied on ILECs to publish their listings. The unfairness of the CLECs getting a “free ride” on the ILECs when it comes to directories has been pointed out in SCTC’s comments, which are addressed further below. But regardless, there is simply no Federal or state law that obligates a publisher to provide listings or a printed directory to a LEC’s customers. The obligation is the other way around.

Second, Charter would prohibit the Petitioners from marketing to CLEC customers. While Dex Media does not do telemarketing of any kind to consumers who call to request directories (or to stop delivery of unwanted directories), the Commission lacks jurisdiction to regulate Dex Media's business practices. Indeed, directory publishers have been held to be protected from unduly intrusive regulations by the First Amendment of the U.S. Constitution. *See, e.g., Dex Media v. Seattle*, 696 F.3d 952 (9th Cir., 2012) (phone books recognized as protected free speech).

Third, Charter proposes to dictate that Dex Media must agree to receive subscriber information from CLECs and the terms of such involuntary agreements. To be clear, so long as CenturyLink or Frontier is required to provide directories to the customers of a CLEC at parity with CenturyLink pursuant to the CLEC's interconnection agreement, Dex Media will carry out that obligation pursuant to Dex Media's publishing agreement with CenturyLink or Frontier. Dex Media was well-compensated by CenturyLink and Frontier for assuming that obligation and did so contractually and of its own free will. But it was under no compulsion, as Charter seeks to put on Dex Media here. Dex Media has neither the desire nor the obligation to take on additional directory publishing or distribution obligations, particularly with no compensation. Any such regulatory requirement would run counter to freedom of contract and constitutional principles.

B. Dex Media Agrees with SCTC That Directory Publishing—Whether Digitally or in Print—Should Not Be the Obligation Solely of ILECs.

Dex Media is not a LEC and therefore has no direct interest in the issues that SCTC raises.¹ But SCTC's comments provide further support for the Commission's rejection of the

¹ As the official directory publisher for CenturyLink and Frontier in South Carolina, Dex Media has an indirect interest. If a CLEC has an interconnection agreement that requires one of those ILECs to accept CLEC listings for publication or to furnish directories to CLEC customers, then Dex Media bears the cost of those obligations, through its publishing contracts with CenturyLink and Frontier.

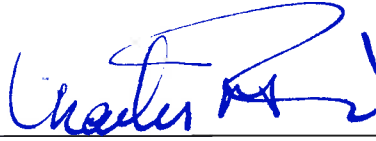
new issues that Charter is attempting to interject into this docket. The conditions Charter seeks are contrary to Federal and state law, and if adopted they would make directory regulations less competitively neutral, rather than more so, as Section 253 contemplates. Charter has been getting directories for free since it commenced local service. As long as LECs are willing to provide that through voluntarily negotiated interconnection agreements, Dex Media certainly has no reason to object.² But Charter has no legal right to have such voluntary practice imposed by regulation or order.

CONCLUSION

For the foregoing reasons, and the facts presented by Dex Media in its opening statement, no immediate action is needed. As noted previously, if the Commission takes any further action as a result of the comments and workshop, it may wish to consider repealing its directory rules. It should certainly not put further directory obligations on Dex Media or ILECs for the benefit of Charter or other CLECs. If directory rules are still needed, they should be applied on a competitively neutral basis to CLECs and ILECs alike. ILECs should not bear the entire burden of such regulations.

² See also, Note 2, *supra*.

Respectfully submitted this 9th day of May, 2017.



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